

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2424

SPONSOR: Senator Crist

SUBJECT: Sex Offender/Probation and Control

DATE: April 15, 2004

REVISED: 04/20/04 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Clodfelter</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/3 amendments</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>ACJ</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill amends s. 948.03, F.S., to prohibit certain sex offenders whose victim was a minor from having unsupervised contact with minors during their term of probation or community control. The bill also provides specified conditions for such an offender to have supervised contact with a minor. Among other things, this includes assessment of the contact risk prepared by a therapist licensed under s. 490.0143, F.S., or s. 491.0143, F.S., or a sex therapist who is a clinical member of the Association for the Treatment of Sexual Abusers.

This bill substantially amends section 948.03, F.S., of the Florida Statutes:

II. Present Situation:

Conditions of probation or community control are either standard or special. Standard conditions are specified as such in the statutes and do not require oral pronouncement at sentencing. If a condition is not identified as a standard condition, it is a special condition that is not enforceable unless it is orally pronounced by the court at the time of sentencing. *See Jones v. State*, 661 So.2d 50 (Fla 2nd Dist. 1995). Some special conditions are included in the statutes as options for the sentencing court, and others are devised by the court.

Section 948.03, F.S., provides standard conditions of probation or community control for persons who have pled or been found guilty of certain serious sexual offenses committed on or after October 1, 1995. These include ch. 794, F.S. (sexual battery), s. 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age), s. 827.071, F.S., (sexual performance by a child), and s. 847.0145, F.S. (selling or buying of minors, which includes child pornography). The standard conditions not affected by this bill are:

- A mandatory curfew.
- If the victim was under the age of 18, a prohibition on living within 1,000 feet of a school, day care center, park, playground, or other place where children regularly congregate.
- Active participation and successful completion of a sex offender treatment program.
- A prohibition on any contact with the victim unless approved by the victim, the offender's therapist, and the sentencing court.
- If the victim was under 18, a prohibition on working for pay or as a volunteer at any school, day care center, park, playground, or other place where children regularly congregate.
- A prohibition on viewing, owning, or possessing pornography.
- A requirement to submit two specimens of blood to FDLE for registration in the FDLE DNA databank.
- A requirement that the offender make restitution to the victim for any medical or psychological services.
- Submission to a warrantless search by probation officers.
- Several additional conditions that apply only to offenders placed on sex offender probation for a crime committed on or after October 1, 1997.

The standard condition that is relevant to this bill is set forth in s. 948.03(5)(a)5., F.S., and prohibits unsupervised contact with children under the age of 18 until completion of a sexual offender treatment program. The offender may have contact with children before completing the treatment program if there is another adult present who is responsible for the child's welfare, has been advised of the crime, and is approved by the sentencing court. The current statute does not specify qualifications for the person administering the sexual offender treatment program. Also, the wording of the condition is ambiguous and has resulted in varying interpretations by the courts.

According to the Department of Corrections, in Fiscal Year 2002-2003, there were 1,251 offenders placed on probation and community control for the sex offenses specified in s. 948.03(5)(b), F.S.

III. Effect of Proposed Changes:

This bill amends s. 948.03(5)(a)5., F.S., to clarify and amend the standard condition of probation or community control that regulates sex offender contact with children. All unsupervised contact with children is prohibited, regardless of whether the offender has completed a sex offender treatment program. The conditions for supervised contact are also revised to allow supervised contact only if the following conditions are met:

- The offender has completed a sex offender treatment program.
- The offender has completed an assessment of the contact risk prepared by a qualified practitioner.
- An adult who is responsible for the child's welfare and who has been advised of the crime and approved by the court is present at all times when the offender is with the child.

- Before supervised contact may begin, the responsible adult must be provided with a safety plan that details the conditions of contact and is prepared by a qualified practitioner who is treating the offender, or has treated the offender.

The bill defines “qualified practitioner” to include a therapist who is licensed by the Board of Psychology under s. 490.0143, F.S., or by the Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling under s. 491.0143, F.S., or a sex therapist who is a clinical member of the Association for the Treatment of Sexual Abusers (ATSA). The ATSA internet site describes it as an international organization focused specifically on the prevention of sexual abuse through effective management of sex offenders.

The additional protections afforded to the victim of the offense by the standard condition in s. 948.03(5)(a)4., F.S., would still apply while the victim is a minor and after the victim reaches adulthood.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The additional requirements may result in more cases for qualified practitioners, and the loss of cases for any therapists who are currently providing treatment but who are not qualified practitioners as defined in the bill. It is also possible that the enhanced requirements may be more costly to the sexual offender.

C. Government Sector Impact:

The Department of Corrections does not anticipate that this bill will have a fiscal impact upon the government sector.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Criminal Justice:

This is a technical amendment that corrects a grammatical error.

#2 by Criminal Justice:

Amends the newly-created definition of “qualified practitioner” to require that the therapist be both appropriately licensed *and* (rather than *or*) a clinical member of the American Society for the Treatment of Sex Abusers. Also expands the license requirement to include equivalent licensure in another state.

#3 by Criminal Justice:

Creates s. 827.031, F.S., making it a first-degree misdemeanor for a person designated as an “adult responsible for a child’s welfare” to fail to be physically present at all times when the offender is having supervised contact with a child, or to fail to abide by the safety plan.

Amends s. 947.1405(7)(a), F.S., to extend the bill’s new requirements for supervised contact to include sex offenders who are on conditional release supervision. (WITH TITLE AMENDMENT)